IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Bail Appl..No. 5053 of 2007()

CRIME NO.471/06 OF KASARAGOD POLICE STATION

: PETITIONER/ACCUSED

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1. B.K.SAMEER,
   S/O.B.M.KUNHAMU,
   SHAHNAZ MANZIL,
   MOIDEEN PALLI ROAD, NELLIKUNNU,KASARAGOD.

2. A.M.MOHAMMED HAIRS @ A.M.HARIS
   S/O.MAHAMOOD HAJI,
   PALLAM ROAD, NELLIKUNNU,
   KASABA VILLAGE, KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINAT

STATE OF KERALA, REP BY SHO,KASARAGOD
POLICE STATION, REP BY PUBLIC PROSECUTOR,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5053 of 2007

Dated this the 21st day of August, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 10 and 11. They face allegations, inter alia, under Section 436 r/w 120 B I.P.C. The crux of the allegations is that a building was set fire by the accused who participated in the overt acts in pursuance of a conspiracy hatched by the petitioners who are allegedly the conspirators. Investigation is now complete. Final report has already been filed. The committal court has taken cognizance already. The matter is pending before the committal court. The petitioners had not appeared so far. Warrants of arrest have been issued by the learned Magistrate against the petitioners. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They had no information about the pendency of the proceedings. They are willing to appear before the learned Magistrate and seek regular bail. They shall co-operate with the court for the expeditious disposal of the case. They apprehend that their application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They therefore pray that appropriate directions under Section 438 and/or 482 Cr.P.C may be issued in their favour.

3. The application is opposed by the learned Public Prosecutor. There are no circumstances justifying the invocation of the discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application for anticipatory bail is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-